

show cause why this action should not be dismissed, as against the Sarpy County Jail, pursuant to [Fed. R. Civ. P. 4\(m\)](#). See [Filing No. 14](#). The court gave Ms. White until close of business on March 2, 2010, to file proof of service on Sarpy County Jail or show cause why Sarpy County Jail should not be dismissed for failure to prosecute. See [Id.](#) As of the date of these Findings and Recommendations, Ms. White has not filed a response to the show cause order.

ANALYSIS

Federal Rule of Civil Procedure 4(m) provides:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

See [Fed. R. Civ. P. 4\(m\)](#). The Eighth Circuit has long held dismissal for failure to prosecute is well within the court's discretion. See [Roberts v. Missouri Div. Of Employment](#), 636 F.2d 249, 250 (8th Cir. 1980). Dismissal without prejudice is appropriate when service of the summons and complaint has not been made upon the defendant within 120 days after filing of the complaint. See [Fed. R. Civ. P. 4\(m\)](#); [Bullock v. United States](#), 160 F.3d 441, 442 (8th Cir. 1998) (per curiam) (affirming district court's dismissal without prejudice under Rule 4(m)); see also [Carmona v. Ross](#), 376 F.3d 829, 830 (8th Cir. 2004) (dismissal affirmed where plaintiff given opportunity, but failed to cure defect).

In this case, Ms. White has failed to effect service of summons and the complaint upon Sarpy County Jail in accordance with Rule 4(m). Ms. White failed to provide the court with any explanation for the failure to serve Sarpy County Jail. Ms. White has not complied with the court's order to show cause why the action should not be dismissed against Sarpy County Jail. Ms. White has acted in a manner that interferes with the orderly processes of this court. The undersigned magistrate judge finds Ms. White's failure to prosecute her action interferes with the orderly administration of justice. Upon consideration,

IT IS RECOMMENDED TO CHIEF JUDGE JOSEPH F. BATAILLON that:

Ms. White's Complaint (Filing No. 1 - [Ex. 1](#)) be dismissed as to Sarpy County Jail, without prejudice, pursuant to Federal Rule of Civil Procedure 4(m).

ADMONITION

Pursuant to [NECivR 72.2](#) any objection to these Findings and Recommendations shall be filed with the Clerk of the Court within fourteen (14) days after being served with a copy of this these Findings and Recommendations. Failure to timely object may constitute a waiver of any objection. The brief in support of any objection shall be filed at the time of filing such objection. Failure to file a brief in support of any objection may be deemed an abandonment of the objection.

Dated this 12th day of March, 2010.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge

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